

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Liberty Source W, LLC and/or Trafford Distribution Center, its alter ego and/or Trafford Distributing Center, Inc., Debtor and Federation of Independent Salaried Unions and International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers-Communications Workers of America, Local 601, AFL-CIO.
Cases 6-CA-33661 and 6-CA-33729

July 31, 2009

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks default judgment in this case on the ground that Respondent Liberty Source W, LLC (Respondent Liberty) and/or Trafford Distribution Center, its alter ego (Respondent Trafford) and/or Trafford Distributing Center, Inc., Debtor (Respondent Debtor) (collectively called the Respondent) has failed to file an answer to the compliance specification.

On July 22, 2005, the Board issued a Decision and Order,¹ that, among other things, ordered Respondent Liberty and Respondent Trafford to make unit employees whole for any loss of earnings and other benefits resulting from Respondent Liberty's and Respondent Trafford's unfair labor practices in violation of Section 8(a)(5) and (1) of the Act. On February 26, 2007, the United States Court of Appeals for the Third Circuit enforced the Board's Order,² and on October 1, 2007, the Supreme Court denied Respondent Trafford's petition for a writ of certiorari.³

On June 13, 2008, Respondent Trafford filed for protection under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court of the Southern District of Florida,⁴ and as a result thereof, Soneet Kapila was appointed Bankruptcy Trustee for Respondent Debtor.⁵

¹ 344 NLRB 1127 (2005).

² 748 F.3d 172 (3d Cir.).

³ 128 S.Ct. 110.

⁴ Case No. 08-17980.

⁵ Although the Respondent is in bankruptcy, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992). Accord *Aherns Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

A controversy having arisen over the amount of back-pay and other benefits due under the terms of the Board's Order, on March 10, 2009, the Regional Director issued a compliance specification alleging the amounts due and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification,⁶ the Respondent has failed to file an answer.

On May 11, 2009, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On May 13, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again failed to file a response. The allegations in the motion and in the compliance specification are therefore undisputed.

Ruling on the Motion for Default Judgment⁷

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in

⁶ Respondent Liberty ceased operating as of September 3, 2003. Accordingly, the compliance specification was served by certified mail on Respondent Trafford, Respondent Debtor, Respondent Debtor's bankruptcy counsel, Bankruptcy Trustee Kapila, and the Bankruptcy Trustee's counsel.

⁷ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Default Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the amounts due are as stated in the compliance specification, and we will order payment by the Respondent of those amounts, plus additional interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Liberty Source W, LLC, and/or Trafford Distribution Center, its alter ego, and/or Trafford Distributing Center, Inc., Debtor, Trafford, Pennsylvania, its officers, agents, successors, and assigns, shall make whole the individuals named in the compliance specification by paying them the amounts following their names, plus additional interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:

Federation of Independent Salaried Unions Bargaining Unit Employees

	TOTAL BACKPAY OBLIGATION	INTEREST DUE
Kundrick, George	\$ 78,483.24	\$ 23,505.73
Geiger, Thayer	73,383.60	21,978.39
Tempero, Carmela	67,820.20	20,312.15
Cherry, Regis	76,499.59	22,911.63
Grace, William	114,482.76	34,287.59
Migliozzi, Joseph	48,535.48	14,536.38
Round, Douglas	21,127.87	6,327.80
Hoeg, Michael	16,838.43	5,043.11
Smith, Jeffrey	18,959.31	5,678.31
Miller, Christopher	8,405.52	2,517.45
Gooch, Randy	6,725.92	2,014.41
Fix, Charles	7,359.67	2,204.22
Yauger, Robert	6,932.67	2,076.34

Wolf, Aaron	6,910.46	2,069.68
Ulery, Shawn	5,540.67	1,659.43
Kulus, Thomas	1,230.77	368.62
TOTALS⁸	\$559,236.16	\$167,491.24

International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers – Communications Workers of America, Local 601, AFL–CIO Bargaining Unit Employees

DISCRIMINATEE	TOTAL BACKPAY OBLIGATION	INTEREST DUE
Muto, Joseph	\$ 53,742.96	\$ 16,096.02
Bertani, Darryl	61,526.40	18,427.16
Stonebraker, Richard	53,207.27	15,935.58
Gavron, Frank	62,538.11	18,730.16
Young, John	53,481.03	16,017.57
Zilionis, William	63,663.31	19,067.16
Hutchinson, Thomas	60,963.11	18,258.45
Zahorchak, Richard	51,165.36	15,324.03
Joyce, Thomas	53,696.65	16,082.15
Welsh, Charles	48,458.88	14,513.43
Hoener Sr., Edward	54,698.95	16,382.33
Funk, William	49,944.96	14,958.52
Wampler, Dewey	44,592.48	13,355.45
Ferree, Howard	47,673.74	14,278.29
Abbott, Kenneth	48,860.85	14,633.83
Calisti, Keith	47,958.29	14,363.51
Pevornik, Mark	41,886.00	12,544.86
Whiteman, Ronald	45,471.69	13,618.77
Thomas, Kathleen	38,148.48	11,425.47
Markle, Daniel	40,735.38	12,200.25
Kuster, David	39,362.01	11,788.92
Kerlin, Holly	8,699.40	2,605.47
Hoener Jr., Edward	9,366.50	2,805.27
Joyce, James	9,582.23	2,869.88
Thomas, Eric	5,962.42	1,785.74
Barefoot, Michael	4,136.43	1,238.86

⁸ The compliance specification appendices are attached to this Supplemental Decision and Order as Attachment 1. We have corrected arithmetic mistakes made in App. C for the total backpay due to these employees, which was erroneously listed as \$559,236.17, and for the total interest due to these employees, which was erroneously listed as \$167,491.23.

Bobich, John	7,449.12	2,231.01
Snyder, Mathew	2,009.57	601.87
Salay, Robert	879.97	263.55
Hockman, Bryan	879.97	263.55
Binkley, Charles	757.86	226.98
Burnett, Ross	757.86	226.98
TOTALS⁹	\$1,112,256.80	\$333,121.07

⁹ We have corrected arithmetic mistakes made in App. D-2 of the compliance specification for the total backpay due to these employees, which was erroneously listed as \$1,112,343.64, and for the total interest due to these employees, which was erroneously listed as \$333,121.04.

COMBINED TOTAL BACKPAY: \$1,671,492.96
 COMBINED TOTAL INTEREST: \$ 500,612.31

COMBINED TOTAL DUE: \$2,172,105.27

Dated, Washington, D.C. July 31, 2009

 Wilma B. Liebman, Chairman

 Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

4

2009-2010

[illegible]

FEDERATION OF INDEPENDENT SALARIED UNIONS BARGAINING UNIT EMPLOYEES

[illegible]

ATTACHMENT 1

LIBERTY SOURCE W, LLC AND/OR TRAFFORD DISTRIBUTION CENTER, ITS ALTER EGO							
CASES 6-CA-33661 AND 6-CA-33729							
INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE AND FURNITURE WORKERS - COMMUNICATIONS WORKERS OF AMERICA , LOCAL 601, AFL-CIO BARGAINING UNIT EMPLOYEES							
COLUMN 1	2	3	4	5	6	7	8
NAME	SEVERANCE	ACCRUED	HOLIDAY	TWO DAY	TWO	TOTAL BACKPAY	INTEREST DUE
	PAY	VAC. PAY	PAY	PAY	WEEK	OBLIGATION	AS OF 6/13/08
			9/1/2003	9/2/03-9/3/03	PAY		
Muto, Joseph	\$ 50,263.20	\$ 2,062.08	\$ 128.88	\$ -	\$ 1,288.80	\$ 53,742.96	\$ 16,096.02
Bertani, Darryl	\$ 56,459.52	\$ 3,184.90	\$ 144.77	\$ 289.54	\$ 1,447.68	\$ 61,526.40	\$ 18,427.16
Stonebraker, Richard	\$ 50,645.60	\$ 821.28	\$ 136.88	\$ 234.71	\$ 1,368.80	\$ 53,207.27	\$ 15,935.58
Gavron, Frank	\$ 59,028.32	\$ 1,435.82	\$ 159.54	\$ 319.07	\$ 1,595.36	\$ 62,538.11	\$ 18,730.16
Young, John	\$ 50,645.60	\$ 1,095.04	\$ 136.88	\$ 234.71	\$ 1,368.80	\$ 53,481.03	\$ 16,017.57
Zilionis, William	\$ 58,933.60	\$ 2,707.76	\$ 159.28	\$ 269.87	\$ 1,592.80	\$ 63,663.31	\$ 19,067.16
Hutchinson, Thomas	\$ 58,933.60	\$ -	\$ 159.28	\$ 277.43	\$ 1,592.80	\$ 60,963.11	\$ 18,258.45
Zahorchak, Richard	\$ 47,685.60	\$ 1,804.32	\$ 128.88	\$ 257.76	\$ 1,288.80	\$ 51,165.36	\$ 15,324.03
Joyce, Thomas	\$ 49,392.00	\$ 2,469.60	\$ 137.20	\$ 325.85	\$ 1,372.00	\$ 53,696.65	\$ 16,082.15
Weish, Charles	\$ 46,396.80	\$ 386.64	\$ 128.88	\$ 257.76	\$ 1,288.80	\$ 48,458.88	\$ 14,513.43
Hoener Sr., Edward	\$ 51,941.12	\$ 916.61	\$ 152.77	\$ 160.77	\$ 1,527.68	\$ 54,698.95	\$ 16,382.33
Funk, William	\$ 46,325.76	\$ 1,737.22	\$ 144.77	\$ 289.54	\$ 1,447.68	\$ 49,944.96	\$ 14,958.52
Wampler, Dewey	\$ 41,241.60	\$ 1,804.32	\$ 128.88	\$ 128.88	\$ 1,288.80	\$ 44,592.48	\$ 13,355.45
Ferree, Howard	\$ 44,781.60	\$ 895.63	\$ 149.27	\$ 354.52	\$ 1,492.72	\$ 47,673.74	\$ 14,278.29
Abbott, Kenneth	\$ 45,381.60	\$ 1,512.72	\$ 151.27	\$ 302.54	\$ 1,512.72	\$ 48,860.85	\$ 14,633.83
Calisti, Keith	\$ 44,781.60	\$ 1,194.18	\$ 149.27	\$ 340.52	\$ 1,492.72	\$ 47,958.29	\$ 14,363.51
Pevornik, Mark	\$ 38,664.00	\$ 1,546.56	\$ 128.88	\$ 257.76	\$ 1,288.80	\$ 41,886.00	\$ 12,544.86
Whiteman, Ronald	\$ 42,530.40	\$ 1,134.14	\$ 141.77	\$ 247.70	\$ 1,417.68	\$ 45,471.69	\$ 13,618.77
Thomas, Kathleen	\$ 35,442.00	\$ 992.38	\$ 141.77	\$ 154.66	\$ 1,417.68	\$ 38,148.48	\$ 11,425.47
Markle, Daniel	\$ 36,634.40	\$ 2,070.64	\$ 159.28	\$ 278.26	\$ 1,592.80	\$ 40,735.38	\$ 12,200.25
Kuster, David	\$ 36,634.40	\$ 796.40	\$ 159.28	\$ 179.13	\$ 1,592.80	\$ 39,362.01	\$ 11,788.92
Kerlin, Holly	\$ 6,766.20	\$ 257.76	\$ 128.88	\$ 257.76	\$ 1,288.80	\$ 8,699.40	\$ 2,605.47
APPENDIX D-1							

[illegible]

